



STATE REPRESENTATIVE

DON PRIDEMORE

TESTIMONY BY REPRESENTATIVE DON PRIDEMORE

"MEDICAL LIABILITY REFORM ACT"

ASSEMBLY BILL 224

ASSEMBLY JUDICIARY AND ETHICS COMMITTEE

MAY 9, 2007

Thank you Chairman Gundrum and members of the Judiciary and Ethics Committee for holding this hearing on Assembly Bill 224, the Medical Liability Reform Act. This piece of legislation is essential to maintaining confidence in Wisconsin's health care institutions. Anyone who has ever lost a loved one can understand the importance of knowing that everything that could have been done to save the life of their loved one was indeed done, the proper procedures were followed and pain and suffering were kept to a minimum. That is why this bill is before your committee today. This bill is aimed at improving integrity and confidence in the Wisconsin health care system. As an example, this bill would give Wisconsin residents who have lost a loved one, peace of mind knowing that the institutions that cared for that loved one were not negligent and that if they were, the employees of that health care institution were not afraid to come forward.

Currently, health care workers are protected from disciplinary actions taken by any health care provider or facility as a result of reporting a perceived law, regulation or rule violation performed by another employee, provider or facility. The reporting health care provider or employee must believe in good faith that he or she is reporting a violation and not reporting a violation they know to be untrue. **What this bill would do is protect health care employees who in good faith report and/or testify on any violation of rule, law or regulation regarding medical malpractice or negligence from civil damages pursued by the accused party.** Why is this protection required? To ensure employees are not afraid to come forward and report medically negligent acts.

This bill would also encourage health care employees who witness medical malpractice violations to come forward without fear of civil penalties. As long as the reporting health care employee is acting in good faith, they cannot be held civilly responsible for their actions. This aspect of the bill will take away another barrier that keeps health care workers from reporting medical malpractice acts.

Imagine if you were a health care worker who witnessed negligence that led to a death or physical injury. Would you come forward if you had the fear of civil reprisal from the accused if your claims were proven unsubstantiated in a review? What if your salary was a small fraction of the doctors or nurses you witnessed performing what you interpreted as a negligent act? Could you afford to come forward? You could with the protections in this bill.

This bill is supported by the State Bar of Wisconsin and the Wisconsin State Employees Union. I believe the Wisconsin Hospital Association and the Wisconsin Department of Regulation and Licensing will also support this bill if amended to include language that will expedite investigations and alleviate any confusion on behalf of the investigating agency.

Thank you for your time and I would be happy to answer any questions you may have.

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Department of Regulation and Licensing Testimony Assembly Committee on Judiciary and Ethics

May 9, 2007

I would like to thank Committee Chair Representative Mark Gundrum and the members of the Committee for giving the Department of Regulation and Licensing (DRL) an opportunity to comment on the proposed amendment to AB 224. I am Atty. Supervisor Michael Berndt. The Department believes that the proposed amendment would further strengthen the bill and help the bill to accomplish its goals.

The proposed amendment would address a concern that has existed in the Department's Division of Enforcement (DOE) for some time over patient identifying information and the current inability for complainants to share this information with our Department.

The current version of AB 224 allows the disclosure of some information but does not authorize the disclosure of more specific information such as the identity of the patient and the disorder being treated. As a result, under the current law the DOE receives complaints that inform us that a credential holder is engaging in unethical behavior or conduct below professional standards of care but we cannot receive the identity of the patient. When this happens the DOE must use the provisions of § 146.82(2) to obtain a large number of records in the hope of identifying the one patient about which the complaint is made. This provision allows our agency to obtain records without patient consent. While this sounds like it is already a powerful tool, its usefulness is severely limited if we do not have a specific patient name.

The proposed amendment would allow the complainant to provide the patient name and other information. As a result, the DOE would be able to focus the investigation right from the start and gather only those patient records that are relevant. The benefits would include fewer patient records being disclosed, less time needed by investigators to locate the correct records and less impact on the providers and facilities that must respond to our record requests.

The Department recognizes the importance of patient confidentiality and therefore is also supportive of the safeguard provision contained in the amendment. The amendment would require the receiving agency, whether DRL or another state agency, to maintain confidentiality of the identifying information unless and until a patient consent is received.

In summary, we believe that the proposed amendment would strengthen AB 224 and would address a long-standing Department concern. This proposed amendment is consistent with the goals of AB 224 and the overarching goals of public protection both from professional misconduct and from potential loss of privacy. Thank you.



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE DON PRIDEMORE

FROM: Don Dyke, Chief of Legal Services

RE: Changes to Current Law Made by 2007 Assembly Bill 224

DATE: May 8, 2007

This memorandum identifies and describes changes to current law made by 2007 Assembly Bill 224. Assembly Bill 224 relates to immunity from liability for a health care provider, health care facility, or employee of a provider or facility who, in good faith, reports a violation of law or a clinical or ethical standard by another health care provider, health care facility, or employee of a provider or facility.

Current law prohibits a health care facility or health care provider from taking or threatening to take disciplinary action against an employee of the facility or provider who, in good faith, reports a possible law violation or standard of care violation to specified individuals or entities. [s. 146.997, Stats.] These employee protections are akin to those found in other various "whistle-blower" laws. Assembly Bill 224 adds to the current whistle-blower protections civil and criminal liability immunity for good faith reporting of possible law violations or standard of care violations. The immunity extends not only to an employee of a health care provider or health care facility, but also to a health care provider or facility. The bill does not affect the current whistle-blower protections. More specific information is included in the discussion below.

CURRENT LAW

Health Care Worker Whistle-Blower Protections

Who is covered. Section 146.997, Stats., provides whistle-blower protections to employees of health care providers and health care facilities. "Health care facility" and "health care provider" are broadly defined. [s. 146.997 (1) (c) and (d), Stats., attached.] Protection is extended to an employee who is aware of any information, the disclosure of which is not expressly prohibited by law, that would lead a reasonable person to believe that a law or health care standard of care has been violated. The protection applies when the employee reports that information to a state agency, to any professionally recognized accrediting or standard setting body that has approved the health care facility or health care provider, to any officer or director of the health care facility or provider, or to any supervisory employee of the facility or provider. [s. 146.997 (2) (a) (intro.), Stats.]

What is protected. The protection covers the following reported conduct: the health care facility or provider or any employee of the facility or provider has violated any state or federal law; or there exists a situation in which the quality of any health care service provided by the health care facility or provider or by an employee of the facility or provider violates any standard under federal or state law or any clinical or ethical standard established by a professional recognized accrediting or standard setting body and poses a potential risk to public health or safety. [s. 146.997 (2) (a) 1. and 2., Stats.]

Current law also allows an employee of a health care facility or health care provider to (1) initiate, participate in, or testify in any action or proceeding in which a violation specified above is alleged; and (2) provide any information relating to an alleged violation specified above to any legislator or any legislative committee. [s. 146.997 (2) (c) and (d), Stats.]

What conduct by an employer is prohibited. The specific protection provided by current law is that no health care facility or health care provider or employee of a facility or provider may take disciplinary action against or threaten to take disciplinary action against an employee of a provider or facility who in good faith has or is believed to have provided information or participated in or testified in any action or proceeding as authorized under the law. [s. 146.997 (3) (a), Stats.] Similarly, a facility or provider or employee of a facility or provider may not take disciplinary action against or threaten disciplinary action against any person on whose behalf another person engaged in the protected conduct. [s. 146.997 (3) (b), Stats.] "Disciplinary action" is broadly defined in s. 230.80 (2), Stats., attached.

Under the law, an employee is not acting in good faith if the employee provides any information the employee knows or should know is false or misleading. [s. 146.997 (3) (c), Stats.]

Enforcement. The Department of Workforce Development has enforcement authority concerning the health care worker whistle-blower law and civil penalties are provided against health care facilities, providers, and their employees who violate the law. [s. 146.997 (4) and (5), Stats.]

Physician Immunity

Current law provides civil liability immunity for a physician who in good faith provides the Medical Examining Board with information concerning an allegation that another physician has engaged in unprofessional conduct or acted negligently in treating a patient. [s. 448.03 (5) (c), Stats.] The immunity extends to any damage that results from an act or omission in providing the information. Further, the physician may not be disciplined by the board for providing the information. The good faith of a physician who provides such information is presumed in any administrative or court proceeding.

ASSEMBLY BILL 224

As noted, Assembly Bill 224 creates an immunity for health care providers, facilities, and employees for providing information on possible violations of law and health care standards by other health care providers, facilities, and employees. It appears only physicians currently have similar immunity (described above) and the bill expands the immunity for physicians.

Who is protected and nature of protections. Assembly Bill 224 provides immunity from civil and criminal liability to any health care provider, health care facility, or employee of a provider or facility who in good faith reports or provides specified information or initiates, participates in, or testifies in any specified action or proceeding. The immunity extends to any act or omission in reporting or providing the information, or in initiating, participating in, or testifying in the action or proceeding. Note that "health care facility" and "health care provider" are defined under current s. 146.997 (1) (c) and (d), Stats. Under the bill, a health care provider, facility, or employee is not acting in good faith if

the provider, facility, or employee knows or should know that the information provided is false or misleading.

What is protected. Specifically, the immunity provided in the bill extends to a health care provider, health care facility, or employee of a provider or facility who in good faith does any of the following:

1. Reports any information, the disclosure of which is not expressly prohibited by law, relating to an allegation that another health care provider, facility, or employee has provided a health care service of a quality that violates any legal standard, has committed a violation of law, or has provided a health care service of a quality that violates any legal standard or any clinical or ethical standard and that poses a potential risk to public health or safety; has engaged in unprofessional conduct; or has acted negligently in treating a patient. (Such reports are protected under the bill when made to an appropriate state agency, an accrediting or standard setting body, or to any officer, director, or supervisor of the health care facility or provider.)

2. Initiates, participates in, or testifies in any action or proceeding in which it is alleged that another health care provider, facility, or employee has committed a violation of law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety; has engaged in unprofessional conduct; or has acted negligently in treating a patient.

3. Provides to any legislator or legislative committee any information relating to an allegation that another health care provider, facility, or employee has committed a violation of law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety; has engaged in unprofessional conduct; or has acted negligently in treating a patient.

Initial applicability. The bill would first apply to health care providers, facilities, or employees who report or provide information, or initiate or participate in or testify in any action or proceeding on the effective date of the proposal.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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Attachment